

CHAPTER 1 -SUMMARY OF THE PASPGP PROCESS; AUTHORITY, PURPOSE AND METHODS FOR THE PASPGP REPORT

SUMMARY OF THE PASPGP PROCESS

The Pennsylvania State Programmatic General Permit (PASPGP) is a Federal Permit issued to the Commonwealth of Pennsylvania in an effort to streamline the Federal and State Permitting processes. The PASPGP was issued on March 1, 1995, was modified in December 1995, and was scheduled to expire on March 1, 2000. On January 31, 2000, the Corps issued Special Public Notice #00-008 advertising and requesting public comment on the proposal to extend the PASPGP for one year. In response to the comments received from Public Notice #00-008, the Corps announced in a Public Notice dated February 29, 2000 that the PASPGP would be extended by reissuance without modification for eight months. As a result this extension will expire on October 31, 2000 or upon reissuance with modification, reissuance without modification or revocation of the PASPGP, whichever occurs first. Another Public Notice will be issued, outlining the Monitoring Report findings and soliciting comments concerning reissuing with or without modifications for an additional five year period or not reissuing the PASPGP.

This permit authorizes the discharge of dredged, excavated, or fill material or structures into Waters of the United States (except those specifically excluded), including wetlands under the provisions of Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899.

The PASPGP is a two tiered process that authorizes the Pennsylvania Department of Environmental Protection (PADEP) or their delegated County Conservation District (CCD) to issue Federal permits for projects impacting less than one acre of wetlands or less than 250 linear feet of stream channel, without Corps, project by project review. Projects impacting one to five acres of wetlands, and stream projects impacting greater than 250 linear feet, are forwarded to the Corps as “Reporting” for review and/or conditioning, but can still be issued by PADEP. Projects impacting over five acres of wetlands are ineligible for the PASPGP and are processed by the Corps for Federal authorization.

More specifically, when Joint Permit Applications submitted by applicants to the Pennsylvania Department of Environmental Protection are “Reported” to the Corps for review prior to issuance of the PASPGP the Corps has 45 days to coordinate with the other review agencies before notifying PADEP of the permit decision. If the Corps determines that the activity complies with all the terms and conditions of the PASPGP, and that the adverse effects are minimal, the Corps will advise PADEP that they may issue the PASPGP or issue the PASPGP with special conditions. If the Corps determines that the adverse effects of the proposed activity are more than minimal, then the Corps will advise PADEP that PASPGP is not appropriate and the project will be reviewed through a Corps Individual Permit. Activities that will result in a total of five acres or more of impacts to waters of the United States, including wetlands, are not eligible for authorization under the PASPGP.

For “Non-Reporting” activities advertised in the Pennsylvania Bulletin, the Corps and the other resource agencies may request on a case-by-case basis that projects be forwarded as “Reporting” for review prior to issuance of the PASPGP.

In addition, PADEP GPs and some activities authorized by waivers and PADEP Emergency Permits (EPs) are also eligible for Federal authorization through the PASPGP, and are not applied for under the above joint application process.

1. General Permits (GPs): GPs are forwarded to the Corps upon issuance by PADEP or their delegated County Conservation District. These GPs are not routinely reviewed by the Corps, however they are used by the Corps for compliance activities and/or general PASPGP monitoring purposes. GP-3s are Reporting to the Corps for gravel bar removal projects. One PASPGP should be issued for all GPs registered related to a single and complete project.
2. Waivers: Projects eligible for Waivers that exceed the Reporting thresholds are forwarded to the Corps for review prior to issuance of the PASPGP. Waiver # 1 (dams less than three feet high and 50 feet wide) is not eligible for PASPGP. Projects requesting authorization from PADEP to use waiver #1 are to receive separate Federal authorization from the Corps. Most waivers do not currently include a

registration process with PADEP. Some waivers cover activities not regulated by the Federal Section 404 Program.

3. Emergency Permits: Projects that exceed the Reporting threshold are forwarded to the Corps for review prior to issuance of the PASPGP.

AUTHORITY AND PURPOSE

The PASPGP, Part VI, (see Appendix) requires that the Baltimore District Engineer, in consultation with Philadelphia and Pittsburgh Districts and Division Engineers, “monitor and reevaluate the PASPGP in order to determine whether to: modify, reissue or revoke the permit”. The purpose of this requirement is to insure that the PASPGP process provides adequate review of permit actions, appropriate public input and maximum resource protection consistent with the requirements of the Federal Section 404 Permit Program. The Federal Section 404 Program provides for individual permit review on a case-by-case basis and a nationwide permit program which authorizes categories of actions with minimal impacts nationwide. The PASPGP accompanying document, “The Standard Operating Procedures (SOP)”, mandated the formation of an interagency PASPGP Monitoring Committee (Committee) to assist with this goal, and to assist the Corps in the preparation of periodic monitoring reports. The Committee consists of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Pennsylvania Department of Environmental Protection, Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, Pennsylvania Historic and Museum Commission, and Pennsylvania’s County Conservation Districts.

METHODS

The Corps, in consultation with the Committee, determined that in order to accomplish the required analysis, a comprehensive review of the PASPGP would be required and the following questions would need to be addressed:

1. Were PASPGP permits processed in a timely manner?
2. Does the PASPGP, as implemented, comply with the 404(b)(1) guidelines?
3. Was there adequate and successful mitigation?

4. Are all applicable Section 404 permit guidelines being reasonably followed?
5. Are there additional ways to streamline the permit process?

In addition, the Corps also recommended consideration of the following:

1. Were PADEP General Permits (GPs) generally issued in an appropriate manner?
2. Was there consistency in approach among PADEP Regions?
3. Was there general compliance with the terms and conditions of permits; and if not,
4. Was non-compliance a result of PASPGP limitations?
5. Did the PASPGP save permit evaluator time?
6. Is the PASPGP an improvement for the regulated public?
7. Was there improved protection to aquatic resources?
8. Is the State Chapter 105 Program consistent with the Federal Section 404 program?

In addressing the above questions, this report provides the first comprehensive analysis of the PASPGP in meeting the environmental and administrative requirements of the Federal Section 404 permit program. Data reviewed covers the first 18 months of implementation of the PASPGP and was collected from all PADEP Regional Offices and delegated County Conservation Districts (CCDs). Additional information, including case studies, covers a time period of approximately 3 years. PADEP Individual Permits (IPs), Small Project Permits, General Permits and Emergency Permits (EPs) were reviewed. Office and field reviews of issued permits were conducted. Evaluators, technical support agencies, and consultants were also polled. This report was prepared jointly by the Baltimore, Philadelphia, and Pittsburgh Corps of Engineers Districts with assistance from the Committee, an interagency advisory panel which assisted in the development of testing protocols, data collection and draft document review.

Office Review Analysis and Field Review Analysis (Chapter 3 Parts 1-2)

Two interagency work groups (teams) were convened, the Office Review Team (ORT) and the Field Review Team (FRT), consisting of volunteer members of the Committee or their designees. Each team was tasked with developing protocols for the collection of pertinent data from all six PADEP Regional Permitting Offices (PADEP Regional Offices). Breakdown of data

was by Regional Office given the high degree of permitting autonomy within each Region. A total of 174 Individual Permits (IPs) and 278 General Permits (GPs) were office reviewed, statewide. A subset of all office reviewed projects were selected for field review analysis. A total of 185 sites were field reviewed. Of these, 86 were IP or Small Project permits and 99 were GP projects. Data forms were developed by the Committee for the collection of data for all ORT and FRT tasks, and are presented for each PADEP Region. Further details concerning the ORT and FRT analysis methodologies, including the specific numbers of permits selected for review are also presented in the introductory sections of Chapter 3, Parts 1 and 2. The following areas were reviewed as part of the monitoring report effort and recommendations were provided, as appropriate:

Single and complete project reviews, field inspections for IP's, wetland boundary verifications, consideration of agency comments, Pennsylvania Natural Diversity Inventory (PNDI) searches, the Pennsylvania Historic and Museum Commission (PHMC) review and clearance process, coordination for project modifications, consideration and documentation of project alternatives, written (file) documentation concerning consideration of functions and values of aquatic resources, permit processing time, and management of the General Permit program.

In addition to the ORT and FRT reviews, the following analyses were also conducted as components of this monitoring effort:

County Conservation District (CCD) Analysis

Under the Chapter 105 permit program, a substantial number of CCDs (41) have been delegated authority from PADEP, to issue General Permits (GP's) and perform limited enforcement functions. Given the scope of this delegated authority, and the high number of GPs being processed by these offices, it is important that the delegated process is structured to insure no more than minimal impacts to aquatic resources; precludes piecemealing, and insures statewide consistency. A majority of the GPs administered by the CCDs represent those permit activities processed by the Corps prior to the PASPGP, as reporting or non-reporting NWPs or small Corps IPs depending upon the particular GP or category of activity and the particular project limits.

A three-page questionnaire was developed by the Committee, for the collection of permitting data from delegated CCDs. Many of the questions were taken directly from PADEP's own monitoring questionnaire, sent to CCDs in the past. They were polled with regard to such issues as

(1) suitability of GP forms, (2) the application process, (3) permit documents and conditions, (4) CCDs resource capabilities for implementing delegated tasks, (5) compliance capabilities, (6) training in wetlands identification, (7) current interface with PADEP and the Corps, (8) PADEP and Corps responsiveness to the needs of the CCDs, regarding management of the GP program and (9) CCDs recommendations for improving the process. Recommendations to address CCDs concerns, as well as, GP process issues, are also provided in Chapter 3. Responses were received from 31 of 41 delegated CCDs. A total of 4,828 GPs were registered by these CCDs during the review period. A graphical presentation and data analysis is presented for all substantive data fields.

Emergency Permit Analysis

PADEP Emergency Permits (EPs) can be issued with the PASPGP attached. A questionnaire was developed to assess a sample of 110 EPs issued since inception of the PASPGP. There were a few instances identified in the monitoring report where more than minimal impacts were authorized under the PASPGP primarily due to a lack of adequate project plans and descriptions. To minimize the potential for authorization of more than minimal impacts under PASPGP, recommendations, including more detailed project descriptions and project limits for EP authorizations, are provided.

GP-3 Analysis

The Monitoring Report reviewed the GP-3 (Bank Rehabilitation, Bank Protection, and Gravel Bar Removal) registration process. Only Gravel Bar Removal projects require reporting to the Corps under the PASPGP. The purpose of this Chapter was to determine if these projects should remain reporting to the Corps or be made non-reporting to the Corps.

Although some GP-3 data was collected through the FRT mission, a separate team was convened to prepare a more comprehensive analysis. As part of this analysis, 100 GP-3s submitted in the past 2 years (since October 1996)

were selected at random and were evaluated by the Baltimore District to determine whether the reporting procedures for GP-3 Gravel Bar Removal are still appropriate. Pre-and post-construction inspections were conducted, and an analysis of findings and recommendations is provided in Chapter 3, Part 5.

Case Studies

A section of case studies has been included to illustrate, through specific example, areas where a more effective process and implementation of the PASPGP is necessary to minimize the potential of more than minimal impacts from occurring and ensure single and complete project reviews. Except for a few instances, the cases do not illustrate more than minimal impacts due to the implementation of PASPGP. Also, these case studies are not intended to suggest there are chronic problems or patterns of misuse of the PASPGP process by Federal, State, or County agencies, but rather process inconsistencies.

Permit Evaluator and Commenting Agency Analysis

Questionnaires were developed to poll Corps permit evaluators, PADEP permit evaluators and technical resource agency staff. The purpose of these questionnaires was to obtain evaluator and review agency staff feedback regarding the PASPGP processes (i.e. regarding efficiency, quality of project reviews, coordination, etc.) and to identify areas where the process can be improved or refined. While an analysis of questionnaire responses was not provided, all responses were tabulated and are presented in Chapter 3, Part 7. A summary of Corps evaluator and resource agency staff responses is provided in the Executive Summary.

Consultants Questionnaire

In order to obtain user feedback concerning the PASPGP, a questionnaire was developed (see Appendix) and sent to 110 engineering consulting firms. The responses were tabulated and are presented in Chapter 11. Overall, user responses indicated that the PASPGP has provided a more timely, better understood, and more streamlined process, as compared to the process in place prior to implementation of PASPGP.

Endangered Species Act Analysis

An assessment of the PASPGP process in effectively meeting the requirements of Section 7 of the Endangered Species Act is provided. This includes both the USFWS perspective and a summary of recommendations and actions already being implemented to insure compliance with the requirements of Section 7 of the Endangered Species Act, including Pennsylvania Natural Diversity Inventory (PNDI), screening for all GPs and secondary screening processes for the bog turtle (*Clemmys muhlenbergii*) and the northern riffleshell mussel (*Epioblasma torulosa rangiana*).

Compensatory Wetland Replacement and the Pennsylvania Wetland Replacement Project (Fund)

A brief discussion of the PADEP Fund and the manner in which it can be effectively incorporated into the PASPGP, is provided. The Corps and PADEP will finalize an SOP for the Fund which meets the needs and requirements of both Federal and State programs. Upon finalization, the SOP will be incorporated into the PASPGP process. Assessment of compensatory mitigation and its success is an ongoing task on the part of the Corps and PADEP and is not included in this report.

Appendix

The following is a list of items found in the appendix.

1. Statistics Provided by PADEP
2. PASPGP Document
3. PASPGP Nine-Month Report
4. Forms and Questionnaires
5. Raw Data Tables
6. Administrative Accomplishments and Ongoing Tasks
7. PASPGP Public Notices